IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 262 of 2004

Judgment reserved on : 5.7.2007

Date of decision : 17.7.2007

Ram Lal **…Appellant.**

Versus

State of H.P. **…Respondent.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the appellant : **Mr. Harish Behl, Advocate.**

For respondent : **Mr. Som Dutt Vasudeva, Addl. A.G. with Mr. D.S. Nainta, Dy. A.G.**

Surjit Singh, Judge

Appellant Ram Lal has preferred this appeal from jail against the judgment of the trial Court, whereby he has been convicted of an offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for ten years and to pay fine of rupees one lakh; in default of payment of fine to undergo imprisonment for a further period of four years.

2. Prosecution version may be stated thus. On 10.1.2003 around 6.15 a.m. a telephonic call was received at Police Post Bhuntar, which was attended by PW-9 SI Tameshwar Singh. The caller informed that a man sitting near the seat of the conductor in bus No. PB-12-C-9164,

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Whether reporters of the local papers may be allowed to see the judgment?

which had left Manikaran for Bhuntar, had been carrying ‘charas’ with him. The information was entered in the ‘Rojnamcha’ per entry, copy Ext. PW-4/A. A copy of this entry was sent by PW-9 Tameshwar Singh, SI to his superior Officer, as per requirement of Section 42 (2) of the Narcotic Drugs & Psychotropic Substances Act. Thereafter Tameshwar Singh formed a party. PW-7 Yoginder Singh, a local man, was associated as a member of the party. The party proceeded towards the bridge on river Beas. Around 6.45 a.m. bus No. PB-12-C-9164 arrived. It was got stopped. SI Tameshwar Singh, along-with PW-7 Yoginder Singh, entered the bus. The conductor of the bus, who was already in the bus, was also associated. The appellant, wearing black jacket and a cap, was found sitting beside the conductor’s seat. He had a bag on his thighs. The appellant was informed that there was information that he was carrying ‘Charas’ and so search of his person was required to be made and if so desired it (the search) could be arranged in the presence of a Gazetted Officer or a Magistrate. The appellant opted for being searched on the spot by PW-9 Tameshwar Singh. Thereafter the bag was searched and it was found to contain ‘Charas’, which weighed 4 Kgs. 700 grams. Two samples, each weighing 25 grams were separated from the recovered stuff. The samples and the bulk stuff were sealed in separate parcels. One of the sample parcels was sent to the Chemical Examiner, who reported that it contained contents of ‘Charas’ on account of presence of resin to the extent of 33.28 per cent.

3. Appellant was sent up for trial. On his pleading not guilty to the charge, the trial Court proceeded to try him. On the conclusion of the trial, the appellant was convicted and sentenced, as aforesaid.

4. Learned counsel representing the appellant submitted that there was no evidence in support of the allegation that ‘Charas’ was recovered from the appellant, except the testimony of PW-9 Tameshwar

Singh, which by itself was not sufficient to base conviction and in any case, his testimony did not inspire confidence because of certain palpable contradictions and discrepancies.

5. We have considered the submission of the learned counsel for the appellant in the light of the evidence on record.

6. According to the prosecution version, there were two independent witnesses with PW-9 Tameshwar Singh, when the appellant was found sitting in the bus near the conductor's seat and holding the bag containing 'Charas' on his thighs. These two witnesses, according to the prosecution, were PW-7 Yoginder Singh and the conductor of the bus. Prosecution did not examine the conductor of the bus. PW-7 Yoginder Singh did not support the prosecution story. He stated that he did not enter the bus nor did he see the bag containing 'Charas' lying on the thighs of the appellant inside the bus. Though the prosecution cross-examined PW-7 Yoginder Singh with the leave of the Court, yet he was not confronted with his statement under Section 161 of the Criminal Procedure Code to contradict his testimony in the Court that he did not enter the bus. Therefore, there should be no reason to disbelieve his testimony that he did not enter the bus nor did he see the appellant sitting on a seat near the conductor's seat and holding the bag on his thighs.

7. He was, however, confronted with the seizure memo Ext. PW-7/C. As per contents of this seizure memo, which bears the signature of PW-7 Yoginder Singh, on search of bag which the appellant had kept on his legs, 'Charas' contained in three packets, which had been kept under a towel and a black coloured pant, was recovered. It is nowhere recorded in this seizure memo that the search was conducted inside the bus or that the witness went inside the bus.

8. Therefore, it cannot be said that PW-7 Joginder Singh stands contradicted even with Ext. PW-7/C. The witness has stated that

the bag was searched outside the bus where he was present and that ‘Charas’ was recovered from that bag.

9. Testimony of PW-9 is not corroborated by any other witness. We are alive to the legal position that a police official is as good a witness as any other respectable person and his testimony should not be rejected only for the reason that he happens to belong to Police Department, which is entrusted with the job of investigating and detecting crime. However, in a case where the Police Officer himself is the complainant as also the investigator, as PW-9 Tameshwar Singh in the present case is, the evidence of such a Police Officer, when not corroborated by any other evidence, requires very close and deep scrutiny. In the case on hand, testimony of PW-9 Tameshwar Singh is not only not corroborated, but is in fact contradicted by the testimony of PW-7 Yoginder Singh. As already noticed, PW-7 Yoginder Singh contradicts the testimony of PW-9 Tameshwar Singh that he (PW-7 Yoginder Singh) was with him inside the bus, when the appellant was allegedly nabbed with the bag, containing ‘charas’, kept by him on his thighs. This witness (PW-7 Yoginder Singh) having not been confronted with his statement under Section 161 of the Code of Criminal Procedure, there should not be any reason to disbelieve his testimony. He cannot be disbelieved only because of his having been permitted to be cross-examined by the prosecution. The conductor of the bus, who per testimony of PW-9 Tameshwar Singh was the second witness with him inside the bus, when the appellant was nabbed, had been given up by the prosecution.

10. Not only that the testimony of PW-9 Tameshwar Singh is not corroborated by PW-7 Yoginder Singh and is rather contradicted by him, the report Ext. PW-9/B, which Tameshwar Singh sent to the S.H.O. Police Station for the registration of the case, also contradicts him in material particulars. In the said report it is mentioned that three packets containing

'Charas' were found from the bag which had been kept by the appellant below a towel and a black coloured pant, but in his testimony as PW-9 Tameshwar Singh says that besides the three packets of 'Charas' a coat of the appellant was there in the bag. He did not say that any towel or black coloured pant were also there in the bag or that the packets of 'charas' were kept under the said towel and pant.

11. In view of the above stated position, we are of the considered view that the case of the prosecution does not stand established beyond reasonable doubt. Consequently, the appeal is accepted. The judgment of the trial Court, convicting and sentencing the appellant of offence under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, is set aside and the appellant is acquitted. He being in jail, serving out the sentence, is ordered to be set at liberty forthwith, in case his detention is not required in any other case.

(Surjit Singh)
Judge

July 17, 2007 (BC)

(Kuldip Singh)
Judge